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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/642,445  | 08/15/2003  | Steven F. Bierman    | VINTL.128A          | 1589             |
| 20995   | 7590        | 06/03/2005           | EXAMINER            |                  |
| KNOBBE MARTENS OLSON & BEAR LLP<br>2040 MAIN STREET<br>FOURTEENTH FLOOR<br>IRVINE, CA 92614 |             |                      | SIRMONS, KEVIN C    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3763                |                  |

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

**Office Action Summary**

Application No.

10/642,445

Applicant(s)

BIERMAN, STEVEN F.

Examiner

Kevin C. Simons

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32-51 and 58-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-51 and 58-78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-51 and 58-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Swauger U.S. Pat. No. 5,413,562.

Swauger discloses a retainer comprising: a body member comprising (10); a channel (50) formed through the body member and having a longitudinal access (50) opening disposed on an underside of the body member to allow at least ingress of the medical article into the channel, at least one abutment extending generally normal to an axis of the inverted channel (44); at least one support having a lower surface (lower wall portion of 50 shown in fig. 4) disposed on the underside of the retainer and to a side of the access opening opposite the channel axis and located so as to prevent contact between the medical article and a patient's skin when the retainer is placed upon the patient's skin; as to claims 33-35, 40-41 (figs. 2, 6A and B); as to claim 36, (figs. 3 and 5); as to claim 37, (fig. 2); as to claims 38-39, (figs. 1-6B); as to claims 42-43, (figs. 1-4); as to claims 44-51 and 58-78, (see above rejections).

As to claims 37 and 66, they have been given little patentable weight since the tapering shape of the medical article is a functional limitation. Furthermore, the tapering shape of the medical article has never been claimed.

### ***Response to Amendment***

Applicant's amendments have overcome the objections and 112 rejections.

### ***Response to Arguments***

Applicant's arguments filed 3/21/05 have been fully considered but they are not persuasive.

As discussed during the interview, the syringe body in Swauger "is forcibly urged against the skin of the patient's limb, and therefore, held in place" by the stabilizing fitting (col. 4, lines 14-16). However, tube (34, fig. 1) is regarded as one or more medical articles that are not in contact with the patient's skin when the retainer is placed upon the patient's skin. Tube portion (34) is clearly not in contact with the skin **while** in the retainer. Claims 44, 49, 60 have been amended along similar lines: Claim 44 now recites among limitations, means for preventing contact between the medical article and the patient's skin; Claim 49 state that the channel is located so as to prevent contact between the medical article and the patient's skin; and claim 60 recites that the support surface is arranged below the channel to prevent contact between the medical article and the patient's skin.

The original language of Claim 58 recited that a distance between the support and the axis of the channel prevents contact between the medical article and the patient's skin. The applied art clearly discloses the structure amended and claimed above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

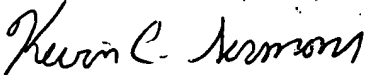
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin C. Sirmons whose telephone number is 571-272-4965. The examiner can normally be reached on Monday-Friday 6:30-4:00 ALT FRI.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Kevin C. Sirmons  
Primary Examiner  
Art Unit 3763  
5/31/05